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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,045	12/11/2003	Don Tabor	TKF-50	8987

7590 11/02/2004
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EXAMINER

SWIATEK, ROBERT P

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,045

Applicant(s)

TABOR ET AL.

Examiner

Robert P. Swiatek

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18, 24, 25 and 29-33 is/are allowed.
- 6) ☒ Claim(s) 19-23, 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-23, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Mellinger (US 4,450,784). The patent to Mellinger discloses a kite 10 in the form of a flying sailboat. The aerial sailboat includes a base 16, 72, 74, 76—considered to be at least minimally flexible—from which depends a substructure 12, 14 in the form of open hulls. A sail 26 extends upwardly from a portion 74 of the base. As the Mellinger kite moved through the air and was buffeted by the wind, the mass of the hulls 12, 14—located as they are at the ends of base portion 74—perforce would exert a bias upon the portion 74, tending to flex or bend it at least slightly up or down. The material comprising the hulls is deemed to be “substantially exposed.” For the purposes of independent claim 26, dowels 74, 76 of Mellinger are construed to be part of a kite substructure also encompassing hulls 12, 14, with the base comprising flexible elements 16, 72.

Claims 26, 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassagnes (US 5,573,208: Ref. AD on Information Disclosure Citation). The Cassagnes kite includes a sail 15, a flexible base 2, and a partially exposed substructure 10, 11 in the form of at least one rod. Rod substructure 10, 11 would flex the base 2 as the kite moved and swooped through the air.

Art Unit: 3643

Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A kite system comprising both a sail and wings coupled to and directly above a base was not described in the specification or illustrated in the drawings at the time of filing of the application.

Claim 27 would be allowable if rewritten in independent form including all of the limitations of the base claim and if the new matter rejection were overcome.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Applicants' arguments filed 4 August 2004 have been fully considered but they are not persuasive. Claims 19-23, 26-28 are not believed allowable for the reasons set forth above.

Application/Control Number: 10/734,045

Page 4

Art Unit: 3643

Summary: Claims 1-18, 24, 25, 29-33 have been allowed; claims 19-23, 26-28 have been rejected.

RPS: ©703/308-2700
29 October 2004

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT ~~333~~ 3643